

Senate Bill 313
February 17, 2011
Presented by Ken McDonald
Senate Agriculture Livestock, and Irrigation Committee

Mr. Chairman and committee members, I am Ken McDonald, Wildlife Bureau Chief of Montana Department of Fish, Wildlife & Parks (FWP). I am here in opposition to Senate Bill 313.

FWP has three primary concerns with this bill:

- subjectivity of defining "severe damage or menace",
- the requirement to intervene between neighbors on issues related to private property rights, and
- potential liability associated with implementing actions on lands of unwilling property owners.

SB313 requires FWP to determine the validity of complaints made by one neighbor against another. But SB313 does not provide a clear definition of what is meant by "severe damage to or menace to the structures, canal banks, or other works on property adjacent to where the activity occurs or the dam is located," making it difficult for FWP to determine the validity of such subjective complaints. What is a menace to one person may be one of nature's wonders.

SB313 grants very broad authority for FWP to enter private land where the beaver activity occurs or dam is located, even if the landowner does not cooperate with an inspection request. SB313 also grants authority for FWP to remove beavers by trapping or transplanting, or remove dams by blasting or other means, against the landowner's wishes. This places FWP in the middle of private property disputes as the judge, jury, and executioner.

FWP is concerned about the potential liability FWP may assume for potential damage to private property which could occur through actions initiated by the Department on a landowner's property without the landowner's permission. Typically, actions to remove beaver dams often require use of explosives or heavy equipment, and the activity generally takes place in sensitive riparian or marshland habitats. We currently do not have this expertise.

Current law liberally allows FWP to issue any necessary permits to landowners for removing beavers and muskrats causing damage to private property. Managing beavers and beaver activity can be a challenging proposition. But FWP questions whether the solutions proposed in SB313, which suggest pitting one landowner against a neighboring landowner and using FWP as the tool to mediate private property right disputes and force actions on potentially unwilling landowners, is necessarily the best solution to this difficult issue.

As a result of these concerns, FWP suggests a Do Not Pass vote on SB313.